

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B04

PLR-139915-07

Date:

February 12, 2008

LEGEND:

Taxpayer =

Old Lossco =

Old Lossco Group =

Entity A =

Entity B =

Entity C =

Entity D =

Entity E =

Entity F =

Entity G =

Individual A =

Business X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Plan =

State =

a =

b =

c =

d =

e =

f =

g =

h =

i =

Dear :

This letter responds to your letter dated June 27, 2007, requesting rulings regarding § 382 of the Internal Revenue Code. The relevant information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Summary of Facts

Taxpayer is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Taxpayer and its consolidated subsidiaries (collectively, the "Taxpayer Group") are engaged in Business X. Taxpayer has only common stock outstanding, which stock is publicly traded and widely held.

The events leading to Taxpayer's current structure are as follows: On Date 1, Old Lossco and the majority of its domestic subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code. The petitions were filed in the United States Bankruptcy Court for the ("Bankruptcy Court"). On Date 2, Old Lossco formed Taxpayer. On Date 3, Taxpayer filed a Chapter 11 petition for bankruptcy. On Date 4, Old Lossco filed with the Bankruptcy Court its Plan providing that Old Lossco would be reorganized into Taxpayer. On Date 5, the Bankruptcy Court confirmed the Plan.

On Date 6, substantially all of the Debtors emerged from Chapter 11 bankruptcy. Pursuant to the Plan, Old Lossco: (i) transferred substantially all of its assets to Taxpayer in exchange for Taxpayer's common stock and the assumption by Taxpayer of certain Old Lossco liabilities

; and (iv) liquidated (the

“Reorganization”). As a result of the Reorganization, Taxpayer became and continues to be the common parent of the Old Lossco Group.

The Old Lossco Group had net operating loss carryovers as of Date 6 (“Pre-Change Losses”). The Reorganization resulted in ownership changes on Date 6 of Old Lossco and the Old Lossco Group under § 382(g) and § 1.1502-92(b), respectively.

Taxpayer’s 5-percent Shareholders

Pursuant to § 1.382-2T(k)(1)(i), Taxpayer relies on filings of Schedules 13D and 13G with the Securities and Exchange Commission (“SEC”) to identify any 5-percent shareholders or first-tier entities within the meaning of § 382 whose ownership interests must be tracked, and thus to determine whether it sustained an ownership change subsequent to Date 6. The percentage of Taxpayer common stock owned by each public group or other 5-percent shareholder is calculated based on information reported in Schedules 13D or 13G filed with the SEC during the period from Date 6 until the date of this ruling letter (the “Relevant Period”). During the Relevant Period, certain Schedules 13G and D (Filing 1 and Filing 2) identify reporting persons that held 5 percent or more of Taxpayer common stock for SEC purposes.

Filing 1

On Date 7, Entity A filed its Schedule 13G pursuant to Rule 13d-1(b) (Filing1), providing that it was an investment adviser within the meaning of Rule 13d-1(b)(1)(ii)(E). As the reporting person, Entity A reported that it had sole voting and dispositive power over a shares of Taxpayer common stock, which represented b percent of the Taxpayer stock outstanding. In response to Item 6 of the Schedule 13G (Ownership of More than Five Percent on Behalf of Another Person), Entity A reported that all securities reported in the filing were owned by its advisory clients and that, to the best of its knowledge, none of those clients owned more than 5 percent of the stock of Taxpayer. Entity A expressly disclaimed beneficial ownership interest in such securities. Entity A further provided that it was not a member of a group formed for the purpose of acquiring, holding, or disposing of shares of the Taxpayer common stock.

Filing 2

On Date 8, Individual A, Entity B, Entity C and Entity D as reporting persons jointly filed Schedule 13G (Filing 2). Individual A controlled Entity B, Entity C and Entity D and reported shared voting power over d shares of Taxpayer common stock, which represented g percent of the Taxpayer stock outstanding. Entity B and Entity C reported that they managed investments owned by Entity E and Entity F. In their capacity as investment managers, Entity B and Entity C each reported shared voting power over h shares of Taxpayer common stock, which represented i percent of the Taxpayer stock outstanding. The Schedule 13G filing did not identify the portion of the

h shares of Taxpayer stock owned by each of Entity E and Entity F. The stock managed by Entity B and Entity C for Entity E and Entity F was less than 5 percent of Taxpayer's stock.

Entity D reported that it was an investment manager to Entity G, a wholly-owned subsidiary of Entity E. Entity D reported shared voting power over e shares of Taxpayer common stock, which represented c percent of the Taxpayer stock outstanding (less than 5 percent of Taxpayer's stock).

The Taxpayer stock indirectly owned by Entity E, through Entity G, in combination with the Taxpayer stock owned directly by Entity E and Entity F was greater than 5 percent.

Entity E, Entity F and Entity G collectively would be treated as owning an amount of stock representing less than 5 percent of the outstanding Taxpayer common stock for purposes of § 382.

Representations

- (a) Taxpayer is a loss corporation as defined in § 382(k)(1).
- (b) Taxpayer's only class of outstanding stock during the Relevant Period is the common stock.
- (c) .
- (d)

Entity E, Entity F and Entity G collectively would be treated as owning an amount of stock representing less than 5 percent of the outstanding Taxpayer common stock for purposes of § 382.

- (e) With the exception of the filings of Schedules 13D or 13G (or the absence thereof), Taxpayer has no actual knowledge regarding ownership of the Taxpayer common stock by any of Entity A, Individual A, Entity B, Entity C, Entity D, Entity E, Entity F and Entity G during the Relevant Period.

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows:

- (1) Taxpayer may rely on the existence or absence of Schedules 13D and 13G, and may rely on the accuracy of the information reported therein, to identify all persons who directly own 5 percent or more of the Taxpayer common stock.
- (2) Entity A is not a “5-percent shareholder” for purposes of § 382(k)(7) because such entity does not have the right to receive or the power to direct the receipt of the dividends from, and proceeds from the sale of, the reported Taxpayer common stock (economic ownership).
- (3) _____ are not treated as exercised under § 1.382-4 in determining whether each of Entity E and Entity G is a “5-percent shareholder” for purposes of § 382(k)(7).
- (4) Each of Individual A, Entity B, Entity C, Entity D, Entity E, Entity F and Entity G is not a “5-percent shareholder” for purposes of § 382(k)(7).
- (5) Taxpayer may rely on the absence of the filing of a Schedule 13D or 13G by the economic owners of Taxpayer common stock to determine that the economic owners are not members of a group that constitutes an “entity” (within the meaning of § 1.382-3(a)(1)(i)) unless Taxpayer has actual knowledge to the contrary.

Caveats

No opinion is expressed about the tax treatment of the transactions under other provisions of the Code or regulations or on the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding the treatment of _____ the application thereto of the constructive ownership rules of § 382(l)(3)(A)(iv).

Procedural Statements

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

A copy of this ruling letter should be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transactions covered by this ruling letter are completed. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the ruling letter.

Under the power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Marie C. Milnes-Vasquez
Senior Technician Reviewer, Branch 4
(Corporate)